



भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

CHIEF GENERAL MANAGER  
INTEGRATED SURVEILLANCE DEPARTMENT

ISD/OW/11628/2018  
April 12, 2018

D Thakurta  
Company Secretary  
Lumshnong, P.O-Khaliehriat  
Dist. - East Jaintia Hills  
Meghalaya - 793210

Dear Sir,

**Re: Request for Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.**

1. Please refer to your letter dated February 19, 2018 and subsequent amendment to the above letter vide letter dated March 22, 2018, seeking an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003. (hereinafter referred to as the "Scheme").
2. In your letter under reference you have inter alia made the following submissions-
  - i. Star Cement Ltd ("STAR") is a company incorporated in Meghalaya and listed on both NSE and BSE. The shares of the company are listed and traded with effect from June 16, 2017 after obtaining relaxation granted from rule 19(2)(b) of Securities Contract (Regulation) Rules, 1957 subsequent to the merger of Star Ferro and Cement limited ( a listed company) with Star Cement Ltd.
  - ii. The company has framed an internal code of conduct as per the requirement of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations") and also appointed a Company Secretary to act as the Compliance Officer.
  - iii. Mr Sajjan Bhajanka, a promoter has sold certain number of shares in the open market on 14<sup>th</sup> February 2018 (first leg of the transaction). He proposes to

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.  
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 26449000 / 40459000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



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acquire a certain number of shares from Rajendra Chamaria, another promoter through an inter-se transfer of shares to be executed on the stock exchange platform (second leg), instead of off-market inter-se transfer which is exempted. However the proposed acquisition shall be within 6 months of the sale. The proposed transfer of shares would be subject to applicable provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

3. You have made reference to the following Regulations of PIT Regulations in your letter
- i. Regulation 8(1) of the PIT Regulations, mandating the formulation and publishing on its website of a code of practices and procedures for disclosure of Unpublished Price Sensitive Information (“UPSI”).
  - ii. Definition of certain key terms from PIT regulations, specifically the definitions of Insider, promoter, trading and unpublished price sensitive information are cited verbatim.
  - iii. Additionally Regulation 4 (1)(i) of Chapter II of PIT Regulations regarding exemption in respect of trading when in possession of UPSI, in respect of inter se promoter transfer, is also cited and is reproduced as under

*“the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;”*

- iv. Furthermore, Clause 10 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders in Schedule B of PIT Regulations is also cited and reproduced below-

*“The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be*



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*disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."*

4. In reference to the factual background provided earlier, you have reiterated the relevant facts as below:

- i. A Promoter being a Key Managerial Personnel is supposed to be privy to UPSI at all times as he is involved in the day to day affairs of the Company. So, he will be an insider as per the regulations.
- ii. Trading has been given an exhaustive definition in the Act. The definition defines any buying and selling under trading and does not specifically exclude inter se transfer among promoters from the ambit of trading. In the given scenario, six months have not elapsed since the sale of the shares. Hence any transfer by the promoter may also amount to contra trading.
- iii. The promoters being the designated person cannot execute a contra trade within 6 months as per the minimum standards of the code of conduct as per the said regulations.

But the compliance officer has been empowered to grant relaxation from such strict application on a case to case basis and the reasons have to be recorded in writing.

- iv. Further, as per the recent guidance note dated August 24, 2015 issued by SEBI where in certain clarifications have been given regarding contra trade transactions, transactions like issue of ESOPs buy back offers, open offers, rights issues, FPOs etc., have been exempted and restriction of 'contra-trade' shall not apply in such matters.
- v. Wherever specific exemptions have been provided, the same may be used in that situation and context only.
- vi. An inter se transfer between promoters does not bring any change in the shareholding pattern of the promoters and public, only the hands of the promoters are changed. Further all the promoters of the Company are expected to have same kind of information regarding the Company. So a transfer among them will be based on the same grounds.
- vii. It is believed that the proposed inter se transfer will not give any undue advantage to the promoters or have any impact on the public shareholding pattern.



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5. In the light of aforesaid submissions, you have sought an interpretive letter on the following questions:
- Whether the proposed inter-se transfer on the stock exchange platform between the promoters by way of purchase of shares by the same promoter who had earlier sold shares within a prior period of six months in the open market will violate any provision of the PIT regulations and attract any penal provisions.
  - After the inter-se transfer of shares between the promoters, if the same promoter who had acquired shares from another promoter wants to sell shares in the open market within six months of the inter-se transfer (third leg), will the same violate the provisions regarding contra trade as provided in the PIT Regulations.
  - Whether provisions of contra-trade apply to promoters individually or whether the entire promoter group is considered the same. For example, if a single promoter has executed a trade, then whether the restrictions on contra trade apply to him individually or will it apply to the entire promoter group.

Without necessarily agreeing with your analysis given in your above mentioned letter, our views on the issues raised by you are as under-

6. At the outset it may be pertinent to point out that PIT Regulations by nature are prohibitive in nature and the applicability of its provisions, is with respect to Insiders and such concerned securities to which a UPSI might pertain so that there is no undue advantage accrued to such class of investors, on account of their access to UPSI; at the expense of other investors or general market participants.
- With respect to the queries mentioned at para 5(i) and 5(ii), attention may be drawn to Clause 10 of Schedule B of the PIT Regulations which states as under-

*"10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations....."*

Attention may also be drawn to Regulation 4(1) and 4(1) (i) of Chapter II of PIT Regulations which reads as under:

*"4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*



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*Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –*

*(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;.....”*

Thus, even if a transaction constitutes a contra-trade, the compliance officer if empowered by the Board of Directors, may in appropriate cases, grant relaxation to the concerned designated person from the strict applicability of the provisions of contra trade provided that such grant of relaxation, does not result in the violation of the PIT Regulations in any other manner.

Upon a harmonious reading of the above provisions, it may be inferred that the proposed on-market inter-se transfer between the promoters by way of purchase of shares by the same promoter who had earlier sold shares within a prior period of six months in the open market, may not qualify to claim the defence as contemplated in clause (i) of the proviso to Regulation 4(1) of PIT Regulations, which otherwise would have been available in case of off-market inter-se transfer. Thus, as against an off-market inter-se transfer as contemplated in clause (i) of the proviso to Regulation 4(1), an on- market transaction as conceived at the second leg may not qualify for grant of relaxation from strict applicability of provisions of contra-trade, from the Compliance Officer.

In view of the above, since the second leg of the transaction itself would not sail through, the third leg of the transaction (i.e. the sale in open market, of those shares which are proposed to be acquired from the promoter in the second leg) becomes redundant and hence does not warrant a reply.

- ii. With respect to the third query, attention may be drawn to Regulation 9 of the PIT regulations which states as under-

*“The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.”*



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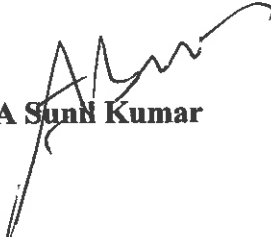
Further to the above, Schedule B of PIT Regulations provides the minimum standards of Code of Conduct to Regulate, Monitor and Report Trading by Insiders. Reference may be made to Clause 3 of Schedule B of the PIT Regulations which states as under-

*“3. Employees and connected persons designated on the basis of their functional role (“designated persons”) in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.”*

Consequent to the above provisions, it may be inferred that, restrictions on contra trade as per clause 10 of Schedule B, do not apply to the promoter group per se. Such restrictions on contra-trade apply individually to persons, including promoters, who are identified as ‘designated persons’.

7. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the question referred.
8. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to the PIT Regulations and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI of the laws administered by any other authority.

Yours faithfully,

  
**A Sunil Kumar**